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MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION IN MATTERS RELATING TO NUCLEAR SAFETY AND RADIOLOGICAL PROTECTION

(a) IMPLEMENTATION OF RESOLUTIONS GC(XXXIV)/RES/529 AND GC(XXXIII)/RES/508

Efforts to promote the effective implementation of the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency

The attached report by the Board of Governors and the Director General is being submitted to the General Conference pursuant to a request made by the Conference last year in resolution GC(XXXIV)/RES/529.

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EFFORTS TO PROMOTE THE EFFECTIVE IMPLEMENTATION OF THE CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT AND THE CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY

1. Last year, in operative paragraph 9 of resolution GC(XXXIV)/RES/529, the General Conference took note of a report by the Director General, in document GC(XXXIV)/INF/281, on the status and implementation of the Convention on Early Notification of a Nuclear Accident (Early Notification Convention) and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (Assistance Convention) and requested the Director General to "pursue further his efforts to promote the effective implementation of the two Conventions". This paper expands on some of the matters covered in document GC(XXXIV)/INF/281 and gives an account of developments since that document was issued.

2. As mentioned in paragraph 2 of document GC(XXXIV)/INF/281, the Agency's Emergency Response System (ERS) was formally put into operation on 18 January 1989. In the event of a nuclear accident or radiological emergency, the ERS is capable of receiving and passing on notifications at any time of the day: during normal Secretariat office hours, the Emergency Response Unit (ERU) at the Vienna International Centre (VIC) can immediately activate the ERS; outside those hours senior technical staff members of the Secretariat are continuously on call in case VIC security officers (trained to recognize messages concerning actual or potential emergencies) have to contact them, whereupon they will decide on the need for activation of the ERS and initiate activation if that is deemed necessary.

3. There have still been no notifications of accidents of the kind specified in Article 1 of the Early Notification Convention, but information received from Member States about situations which they have felt should be

brought to the Agency's attention in the spirit of the Convention has, from time to time, been passed on by the Agency to other Member States and other international organizations given the actual or potential interest in the situations in question. There has been a positive response to such information dissemination, which has – in addition – proved useful as a means of periodically testing the Agency's communication systems, so that the Secretariat intends to continue with the practice.

4. As reported in document GC(XXXIV)/INF/281, the Agency has provided help under the Assistance Convention following two radiological accidents: the radiological accident in Goiânia, Brazil, in 1987, in which the misuse of an abandoned medical teletherapy source led to radiation injuries (resulting in four deaths) and to widespread contamination; and the radiological accident in 1989 at an industrial irradiation facility in San Salvador, El Salvador, which resulted in one death. Since the latter accident, no other requests have been received for Agency assistance under this Convention.

5. The ERS is at present undergoing modification – particularly as regards emergency response procedures and the ERU's facilities – in the light of the lessons learned from the comprehensive ERS exercise conducted on 19 April 1990 (see para. 5 of GC(XXXIV)/INF/281). It is expected that a second comprehensive ERS exercise will be conducted early next year.

6. Also in the light of the lessons learned from the ERS exercise conducted in April 1990, and of the general experience gained in operating the ERS, the "Emergency Notification and Assistance Technical Operations Manual" (ENATOM) and the "Manual on the Use of the World Meteorological Organization (WMO) Global Telecommunication System (GTS) for the Early Notification Convention" (see para. 2 of GC(XXXIV)/INF/281) are being revised; the revised manuals will be distributed to Member States and to other international organizations as soon as they are available.

7. With the help of an advisory group, the Secretariat is preparing a further document for use in implementation of the ERS. The document deals in particular with information and data exchange during the early hours and days following a nuclear accident or the start of a radiological emergency. It will be ready for publication this year (see sub-para. 10(a) below).

8. Co-ordination with the World Meteorological Organization and the World Health Organization (see para. 6 of GC(XXXIV)/INF/281) and with other organizations belonging to the United Nations family is being pursued through the Inter-Agency Committee for the Response to Nuclear Accidents (IAC/RNA)[1/], which is working on the formulation of an agreement specifying the responsibilities of each United Nations organization that might become significantly involved in a radiological emergency.

9. The Secretariat will continue its efforts to increase the effectiveness of the ERS through further upgrading of the Agency's response plan and implementation procedures, the training of staff, co-ordination with Member States and other organizations, and periodic ERS exercises. However, the focus of its attention will begin to shift towards ensuring that each Member State has the ability (i.e. infrastructure etc.) to receive a notification and to transmit one to the Agency in a timely manner and also the ability to receive critical radiological information from the Agency or nearby States and to inform its citizens quickly and in an appropriate manner and protect their health and safety.

10. With this objective in view,

(a) a document entitled "Guidance on the International Exchange of Information and Data following a Major Nuclear Accident or Radiological Emergency" will be issued this year;

1/ IAC/RNA was established in 1986, following the Chernobyl accident, at the initiative of the Agency and with the co-operation of a number of other United Nations organizations.

(b) the Secretariat will this year provide all Member States with computer software by means of which encoded information and data in Agency formats transmitted electronically to Member States during an emergency can be automatically decoded into plain language;

(c) assistance to developing Member States in improving their emergency response infrastructures and systems for communicating with the Agency will be provided through – inter alia – regional emergency planning and preparedness training courses, and expert missions; and

(d) the Secretariat will develop guidance on how to exploit advances in communications and computer software and thereby improve the interface between the Agency and Member States during a nuclear accident or radiological emergency.

11. Since document GC(XXXIV)/INF/281 was issued (in August 1990), FAO and the following States have become Parties to the two Conventions: Brazil, Cuba, Greece, Nigeria, Sri Lanka and Turkey. Finland, Italy and Yugoslavia, which were already Parties to the Notification Convention, have become Parties to the Assistance Convention. As of 31 July 1991, 58 States/Organizations were Parties to the Notification Convention and 55 States/Organizations were Parties to the Assistance Convention.[2/]

2/ See document INFCIRC/335/Add.5 – INFCIRC/336/Add.6, to be issued soon.

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MEASURES TO STRENGTHEN INTERNATIONAL CO-OPERATION IN MATTERS RELATING TO NUCLEAR SAFETY AND RADIOLOGICAL PROTECTION

(c) LIABILITY FOR NUCLEAR DAMAGE

Report by the Board of Governors

1. In resolution GC(XXXIV)/RES/529, adopted at its last regular session, the General Conference took note of the report (in document GC(XXXIV)/931) on the question of liability for nuclear damage submitted by the Board of Governors pursuant to Conference resolution GC(XXXIII)/RES/508, reiterated the priority it attached to the consideration of this question and requested the Board to present a further report on the question to it at its thirty-fifth regular session.

2. As stated in the Board's report, in February 1990, the Board established the Standing Committee on Liability for Nuclear Damage and requested it, in particular, to:

(i) consider international liability for nuclear damage, including international civil liability, international State liability, and the relationship between international civil and State liability;

(ii) keep under review problems relating to the Vienna Convention on Civil Liability for Nuclear Damage and advise States party to the Convention on any such problems; and

(iii) make the necessary substantive preparations and administrative arrangements for a revision conference to be convened in accordance with Article XXVI of the Convention on Civil Liability for Nuclear Damage.

3. In accordance with the decision taken by the Board in February 1990, the Standing Committee is open to all Member States of the Agency, and other States and interested organizations may be invited by the Standing Committee to be represented by observers at its meetings. It meets as appropriate and reports to the Board periodically on the progress of its work.

4. Since the thirty-fourth regular session of the General Conference, the Standing Committee has held two sessions and also an intersessional meeting, during which it moved from a general exchange of views to the consideration of specific texts in connection with revision of the Vienna Convention. The issue of international State liability was also discussed; however, its consideration is still at an early stage.

5. The Standing Committee will hold its next session from 2 to 6 December 1991; this session will be preceded by an intersessional meeting, which will take place from 21 to 25 October 1991.

6. On 12 June 1991, the Board had before it the report of the Standing Committee on its third session (8-12 April 1991), which reflects the progress achieved so far in the consideration of the question of liability for nuclear damage. The Board decided to transmit that report (see the Appendix to this document*/ to the General Conference.

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*/ The Appendix reproduces only the report of the Standing Committee with (in Annexes I and II) the reports of its Drafting Committee and Working Group. Draft texts for the revision of the Vienna Convention adopted by the Drafting Committee for further consideration, written proposals submitted by delegations and other relevant material are not reproduced in this Document; they are available from the Legal Division upon request.

GC(XXXV)/964
Appendix

Standing Committee on Liability for Nuclear Damage

SCNL/3/INF.2/Rev. 1

Third Session
Vienna, 8-12 April 1991

23 April 1991

Report of the Standing Committee on Liability for Nuclear Damage

1. The Standing Committee held its third session at the Agency's Headquarters in Vienna from 8 to 12 April 1991, under the Chairmanship of H.E. Mr. L.H.J.B. van Gorkom of the Netherlands. H.E. Mr. Taher Shash of Egypt, Professor Jan Lopuski of Poland, and H.E. Mr. Nelson Laviña, Resident Representative of the Philippines served as Vice-Chairmen. H.E. Mr. Alejandro San Martín Caro, Resident Representative of Peru, served as Rapporteur.

2. Representatives of the following 57 Member States participated in the meeting: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Cameroon, Canada, Chile, China, Cuba, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet Nam, Yugoslavia and Zaire.

3. Four intergovernmental organizations, namely the European Communities represented by the Commission, FAO, OECD/Nuclear Energy Agency and UNEP and three non-governmental organizations, namely British/European Insurance Committee, Greenpeace International and UNIPEDE were represented by observers. One delegation maintained its prior reservation with regard to participation by Greenpeace International.

4. At its opening meeting, the Standing Committee adopted the following agenda:

1. Organization of work, election of officers
2. Proposals for the revision of the Vienna Convention on Civil Liability for Nuclear Damage
   - A. Report of the Drafting Committee of the Second Session (SCNL/2/INF/2)
   - B. Draft texts recommended by the Intersessional Working Group as a framework for further consideration:
     - (a) paragraph 3 of a new article on geographical scope
     - (b) definition of the Installation State in respect of military installations
     - (c) amendment to Article VII
   - C. Other proposals
3. Dispute settlement and procedure for settlement of claims:
   - A. Amendment to Article XI and new Article XIA of the Vienna Convention
   - B. Annex concerning an International Tribunal to be established under Article XIA
     Draft texts recommended by the Intersessional Working Group as a framework for further consideration
4. Draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and Paris Convention; draft text recommended by the Intersessional Working Group as a framework for further consideration
5. International State liability for nuclear damage and its relationship to the international civil liability regime
6. Future programme of work
7. Adoption of the report

5. At the same meeting, the Standing Committee reconvened the Drafting Committee to consider items 2 and 4 of the agenda and agreed that Mr. Wouter Sturms of the Netherlands would continue as its Chairman. The Committee also established a Working Group under the Chairmanship of Mr. Christian Zeileissen of Austria to consider items 3 and 5 of the agenda. The reports of the Drafting Committee and the Working Group are reproduced as annexes I and II to this report.

6. The Standing Committee requests the Secretariat to prepare a compilation of the texts of provisions on definition of environmental damage which appear in recent international agreements as well as draft instruments currently under consideration concerning liability in other fields.

7. The Standing Committee further requests the Secretariat to reconvene the open-ended Intersessional Working Group of experts to consider further the issue of supplementary funding for compensation of nuclear damage, inter alia, on the basis of the draft International Convention on Compensation for Nuclear Damage (Annex V of the report of the Intersessional Working Group), and other proposals, as well as the proposals on dispute settlement and settlement of claims with a view to make appropriate recommendations to the next meeting of the Standing Committee.

8. The written proposals submitted by delegations for the third session of the Standing Committee relating to outstanding issues are reproduced in Annex III of the present report.*

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* See the footnote on page 2 of the report by the Board of Governors which precedes this report.

ANNEX I

Report of the Drafting Committee

1. The Drafting Committee held 5 meetings on 8-11 April 1991 and considered items 2 and 4 of the agenda of the Standing Committee.

2. The Committee continued consideration of specific proposals to amend the Vienna Convention on the basis of the draft texts recommended by the second session of the Standing Committee and Intersessional Working Group (11-15 February 1991). It also had before it written proposals and observations submitted prior to and during the third session of the Standing Committee by delegations of Australia, China, Denmark, France, Germany, Ireland, Israel, Japan, Philippines, Poland, Sweden, Thailand, the United States and the British/European Insurance Committee.

3. The Committee made substantial progress in adopting a number of draft texts for revision of the Vienna Convention. They are marked in the annex to this report* as incorporated in the draft texts adopted by the Committee at the second session as a basis for further consideration. The issues on which only preliminary discussions were held or which clearly needed further drafting are identified by square brackets.

Due to lack of time, the Drafting Committee was not in a position to discuss or discussed partially some of the issues referred to it and related written proposals.

4. The Committee agreed that outstanding issues, proposals and observations referred to in paragraph 3 above could be dealt with at further sessions of the Standing Committee. It further agreed that written proposals relating to such issues which have been submitted by delegations for this session would be annexed to the report of the Standing Committee.

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* See the footnote on page 2 of the report by the Board of Governors which precedes this report.

5. The Committee held a brief exchange of views on the issue of supplementary funding. It agreed that the draft International Convention on Compensation for Nuclear Damage Supplementary to the Vienna Convention and Paris Convention, prepared by the Secretariat, as well as an alternative proposal, submitted by the delegation of Poland for this session, should form the basis for future consideration of this issue and to that end should be annexed to the report of the Standing Committee.

ANNEX II

Report of the Working Group

1. The Working Group held two meetings on 9-10 April 1991 and considered items 3 and 5 of the Agenda of the Standing Committee.

2. The Working Group had a general exchange of views on the item of dispute settlement and procedure for settlement of claims using the draft texts recommended by the Intersessional Working Group for Article XI and a new Article XI.A of the Vienna Convention as a general framework for consideration. As the discussion was inconclusive on this issue and in the light of time constraints, the Working Group recommended that the item be further considered at the next session of the Standing Committee on the basis of the draft texts recommended by the Intersessional Working Group as proposed to be amended by the delegations of Austria and the Netherlands, the proposal submitted by Egypt which received wide support from the delegates who took the floor in the Working Group, as well as new proposals that may be submitted for the next session.

3. In the discussion on the question of International State Liability for Nuclear Damage and its relationship to the international civil liability regime there was wide support from the delegates who took the floor for the inclusion of elements of international State liability in the revised Vienna Convention. Some delegations on the other hand had reservations or objections to such an inclusion. The Working Group concluded that the Standing Committee should continue its discussion on the issue. It considered that this discussion should be based on the Australian and Italian written proposals submitted to this session of the Standing Committee as well as new proposals that may be submitted.